IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3211 OF 2004

Mangalore Refinery & Petrochemicals Limited. .. .. Petitioner

v/s.

The Assistant Commissioner of Income-tax 3(2) & ors. .. .. Respondents

Mr.S.E. Dastur, Senior Advocate with Mr.Murlidhar i/by M /s.Mulla & Mulla for petitioner.

Mr.A.K.Kotangale with Mr.A.S.Rao for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 14th November 2005

ORAL ORDER : (Per H.L. Gokhale, J.)

1. Heard Mr.Dastur in support of this petition. Mr.Kotangale appears for the respondents.

2. Rule, returnable forthwith. Reply is already filed. Mr.Kontangale waives service.

3. The petitioner herein is a Public Limited Company engaged in the business of running a petroleum refinery at Mangalore. The petitioner has been constrained to challenge the order dated 29th March 2004 passed by the Assistant Commissioner of Income Tax Range 3(2), Mumbai,

issuing a notice of reopening the assessment of income of the petitioner under Section 148 of the Income Tax Act, 1961 for the assessment done for the year 1998-99. According to the Commissioner, interest of Rs.8,28,73,625/- remained to be added back while arriving at the book profit under Section 115JA of the Income Tax Act. However, it is not a case of the petitioner not disclosing the relevant information at the earlier occasion when the assessment was done. The relevant part of reasons enclosed therewith reads as follows:-

> " On perusal of records, it is noticed that the Income Tax interest of Rs.8,28,73,625/- debited to Profit & Loss A/c remains to be added back while arriving at Book Profit u/s.115JA. I have therefore reason to believe that the income has escaped assessment to the extent 30% of Rs.8,28,73,625/- being Rs.2,48,62,082/-. Since the period of 4 years has lapsed from the end of the relevant assessment year, the sanction of CIT is required by virtue of Proviso to Sec.151(1) before the issuance of notice u/s.148 of the I.T. Act. The proposal in proforma is placed along side for kind

sanction. "

4. After this order was passed, the petitioner filed the present petition. However, since this is a dispute between a Government Company on one hand and the Income Tax Department on the other, it also filed an appeal to the High Power Inter-ministerial Committee which the petitioner is expected to file in all such matters. Yet the respondents proceeded to pass an order after reassessment though aware of pendency of the dispute before the High Power Committee. The petitioner, therefore, pressed for an ad-interim order. Inasmuch as the High Power Committee was seized of the matter and the decision was taking its own time, this Court passed an ad-interim order on 10th March 2005 in terms of prayer clause (d) of this petition, granting an ad-interim relief restraining the respondents from acting upon the said re-assessment order dated 28th February 2005, which had been passed in the meanwhile after reopening the matter.

5. Mr.Dastur, learned Counsel appearing for the petitioner, submits that in view of the fact that the matter was pending before the High Power

Committee, the Authorities concerned were not expected to reopen the matter and pass the order in the manner in which they have passed it. In this behalf, he relied upon paragraph 6 of the order of the Apex Court in the case of **Oil & Natural Gas Commission vs. Collector of Central Excise reported in (1994) 116 CTR (SC) 643**.

6. That apart, Mr.Dastur submitted that under the proviso to Section 147 of the Income Tax Act, income escaping assessment can be looked into afresh only upto four years. An action can be taken after the expiry of four years, provided there is a failure on the part of the assessee to make a correct return. He has his own submissions on merits with respect to the interest component under Section 115JA of the Income Tax Act. But that apart, his principal submission is that all necessary papers were disclosed before the Authorities and they had arrived at a correct determination. In this behalf, he relied upon a Division Bench judgment of this Court in the case of **Hindustan Lever Ltd. vs. R.B.Wadkar, Assistant Commissioner of Income-Tax & ors. reported in 268 ITR page 332**, to which one of us (Devadhar, J.) was a Member. That judgment has explained the scope of Section 147 of the Income

Tax Act and in that judgment the Court has held that if there was no failure on the part of the assessee to disclose all material facts, the Assessing Officer would have no jurisdiction to reopen the assessment proceedings.

7. Mr.Kotangale, learned Counsel appearing for the respondents, on the other hand, drew our attention to a judgment of the Apex Court in the case of **Associated Stone Industries (Kotah) Ltd. vs. Commissioner of Income-Tax reported in 224 ITR page 560**. That was on Section 34 of the Income Tax Act, 1922, as it then stood. Under sub-section (1)(b) of Section 34 of the Income Tax, 1922, it was specifically provided that notwithstanding that there has been no omission or failure on the part of the assessee, the department has jurisdiction to reopen the matter. As far as the facts of that case are concerned, it is clearly seen that there was no dispute that the reassessment proceedings were taken within a period of four weeks. The submission of Mr.Kotangale based on this judgment that a reassessment is permissible cannot, therefore, be accepted.

8. Mr.Kotangale submitted that an Appeal is

available to the petitioner to the Authority concerned. In our view, when the decision to reopen the matter itself is taken beyond the period provided and when there is no failure on the part of the assessee to disclose the relevant material, the assessee cannot be put into another jeopardy by reopening the matter.

9. In the circumstances, in our view, the petition deserves to be allowed and we quash and set aside the Notice dated 29th March 2004 issued under Section 148 of the Income Tax Act and also the consequent reassessment order made on 28th of February 2005.

10. Rule is made absolute accordingly in terms of prayer clause (a). No order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)